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C O N F I D E N T I A L GUATEMALA 001683

SIPDIS

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TAGS: [MARR](#) [PREL](#) [MOPS](#) [PGOV](#) [PINR](#) [GT](#)

SUBJECT: FOREIGN MINISTER ASKS FOR TIME TO CONSIDER ARTICLE 98 AGREEMENT

Classified By: A/DCM David Lindwall for reason 1.5 (d).

11. (C) Summary: Foreign Minister Edgar Gutierrez told the Ambassador on June 24 that the MFA is seeking interagency comments on the proposed bilateral Article 98 Agreement, and is engaged in internal political consultations on the desirability of signing the agreement. He asked that we give the MFA until mid-July to come up with a coordinated GOG position on an Article 98 Agreement before seeking bilateral consultations. End summary.

12. (C) The Ambassador met on June 24 with Foreign Minister Edgar Gutierrez to offer, inter alia, that a USG negotiating team meet with senior MFA officials on June 27 to discuss the status of the USG proposal for a bilateral Article 98 Agreement. The Ambassador noted the priority the US attaches to signing an agreement with Guatemala, particularly in view of the large number of humanitarian joint exercises carried out every year in Guatemala. The Ambassador told Gutierrez that, although Guatemala has not yet ratified the Statute of Rome, the lack of guarantees for US military personnel created by the absence of an Article 98 Agreement will be a disincentive for continuing humanitarian exercises at the levels of previous years. Foreign Minister Gutierrez said the GOG fully recognizes the importance of this issue, and said he had had a positive meeting on the USG proposal with A/S Rademaker on the margins of the OASGA in Santiago. He thanked us for the counter-proposal given to him by A/S Rademaker, and said that the MFA's legal division had already sent the draft around to other ministries for their comments. Gutierrez said the MFA was disappointed that the U.S. had not accepted an operative paragraph counter-proposed by the GOG, but said the MFA Treaty Office is producing an evaluation of the current proposal. Gutierrez said that he had tasked Ambassador Maritza Ruiz de Vielman, his special advisor, with ensuring that the MFA and other ministries complete their review of the proposal expeditiously.

13. (C) Gutierrez said that, besides the technical/legal review of the current text, he was also engaged in a round of political consultations on the matter more generally. The Foreign Minister pointed out that he had been a member of the historical clarification commission which had fingered General Rios Montt for human rights violations during the internal conflict. His subsequent decision to join the FRG government (note: Rios Montt is the Secretary General of the FRG. End note) had come as a big shock to the human rights community. He said, "if now I am perceived as the one who is pushing an international agreement that could protect Rios Montt from international justice, I will have lost all credibility." The Ambassador pointed out that the ICC will have no jurisdiction over Rios Montt as there is no retroactivity in its actions. Gutierrez acknowledged the point, but said human rights groups in Guatemala are not convinced. Gutierrez said he has begun a consultation with the leading human rights groups and others to form a more educated position on an Article 98 Agreement. He said that he was departing for a two week visit to European capitals and would be back in Guatemala by mid-July. He believes that by that time the GOG will be prepared to discuss an Article 98 Agreement more formally. Gutierrez asked if we could give him until then to revisit the issue.

14. (C) Comment: Foreign Minister Gutierrez recognizes that securing an Article 98 Agreement is one of the USG's highest priorities in Guatemala at this time. He is also aware that, even absent Guatemala's accession to the Statute of Rome, the lack of an Article 98 Agreement could have consequences for our military-to-military relationship. When Gutierrez returns from Europe in mid-July we will broach the issue with him again.
HAMILTON